IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3411 OF 2004

Dnyaneshwar Marutrao Bartakke
(since deceased through his L.Rs.)
1a) Umadevi D. Bartakke & Ors. ... Petitioners

Vs.

Shri Rajesh Chandrakant Thakar
& Another. ... Respondents

Mr. P.S. Dani for the petitioners.

Mr. V.G. Mujumdar for respondent 1.

CORAM: SMT. RANJANA DESAI, J.

DATED: 29TH MARCH, 2005.

P.C.:-

1. The petitioners are the heirs of Dnyaneshwar Marutrao Bartakke, the original tenant. Petitioner 1(a) is the mother and petitioners 1(b) and 1(c) are the sons of the original tenant. Respondent 1 is the landlord. Respondent 2 is the defendant. He is the third son of the deceased tenant. Respondent 1 filed a suit for eviction on the ground of change of user, carrying out permanent alteration in the suit premises and on the ground of bonafide and reasonable requirement of the landlord. The trial court decreed the suit only on the ground of bonafide and reasonable requirement of the landlord. The lower appellate court confirmed the decree. The petitioners were not parties to the suit or the appeal. But they claim to be aggrieved by the

impugned judgment and decree as heirs of the deceased tenant and, hence, they have approached this court. By a detailed order, the writ petition filed by respondent 2 is rejected by me, today.

2. In this petition, the grievance of the petitioners is that they ought to have been impleaded as party defendants in the suit. The decree has been passed on the ground of bonafide and reasonable requirement of the landlord. The evidence clearly indicates that, at the time of death of the original tenant, respondent 2 - Dr. Girish Dnayneshwar Bartakke was running a dispensary in the suit premises and, as such, in the suit, after the death of the original tenant, he was impleaded as party defendant. Defendant Dr. Girish Dnayneshwar Bartakke has stated that though the suit premises stood in the name of his mother, he was paying the rent. There is no evidence to show that petitioners 1(b) and 1(c) were residing with the deceased original tenant at the time of his death or carrying on business in the suit premises at the time of his death. If at all, they had any interest in the suit premises, nothing prevented them from leading their evidence in the suit. At one stage, it was suggested that the mother would be put to hardship because she is carrying on business in the suit premises. However, it has come on record that the mother is not carrying on business in the suit premises. In fact, the defendant - Dr. Girish D. Bartakke has himself stated that the mother is selling milk at Sonya Maruti Chowk.

From this inconsistency, it is evident that this is an attempt on the part of the petitioners to defeat the decree. There is no substance in the petition. The findings of fact recorded by the courts below as regards bonafide and reasonable requirement of the landlord is unassailable. No interference is called for. Hence, petition is rejected.

3. At this stage, Mr. Dani, the learned counsel for the petitioners states that the ad-interim relief be continued for eight weeks as the petitioners want to challenge this judgment in the Supreme Court. The learned counsel for the respondents objects. In the circumstances of the case, ad-interim relief is extended for a period of eight weeks from today on the petitioners and all adult members of their families filing usual undertakings in this court within a period of three weeks that in the event they are unable to get any favourable order, on the expiry of eight weeks, they will hand over peaceful and vacant possession of the suit premises to respondent 1.

4. All concerned to act on the authenticated copy of this order.

(SMT. RANJANA DESAI, J.)